Mosher M.P. THE COMPTROLLER GENERAL ECISION OF THE UNITED STATES

FILE: B-188819

DATE: February 8, 1978

MATTER OF: Frances (Goldberg) Zucker - Severance Pay

DIGEST:

Employee was appointed on April 21, 1975, to a position with American Revolution Bicentennial Administration. The agency was scheduled to be terminated no later than June 30, 1977. Employee resigned July 1, 1976. Employee is not entitled to severance pay under law and applicable regulations.

This action is in response to an undated letter received by the Claims Division of this Office on April 4, 1977, from Mrs. Frances H. Zucker, a former employee of the American Revolution Bicentennial Administration (ARBA), which in effect constitutes an appeal from a settlement of the Claims Division of this Office dated February 0, 1977. That settlement upheld a determination by the Department of the Interior disallowing the former employee's claim for severance pay.

The record indicates that the employee resigned from employment with the United States Government as a secretary (stenography) in the ARBA, a temporary agency serviced by the Department of the Literior, effective July 1, 1976. The employee received a temporary appointment to her position effective April 21, 1975, not co exceed April 20, 1976. That appointment was converted to Reinstatement-Career effective January 18, 1976. The employee had previously been employed by the Government in the Department of Defense from 1961 until her resignation on June 12, 1974. The break between her employment in the Department of Defense and subsequent employment with ARBA was 314 days. A dispute has arisen concerning the employee's entitlement to severance pay. It is her contention that her resignation was involuntary since prior to her resignation her name had appeared on an information sheet circulated through her office showing a termination date for her position as August 31, 1976. That information sheet was dated May 11, 1976. The Department of the Interior disallowed her claim for severance pay upon the basis that her resignation was voluntary, it having been submitted before she had officially been issued a reduction-in-force letter. Further, the agency held that she would not be entitled to severance pay in any event since her employment was temporary having accepted employment in an agency, ARBA, with a definite termination date.

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The AkBA was established by Public Law 93-179 deted December 11, 1973, 87 Stat. 697, to terminate no later than June 30, 1977.

Severance pay for Federal employees is authorized in 5 U.S.C. § 5595. Subsection (a)(2)(ii) of section 5595 axcludes from coverage:

"(ii) an employee serving under an appointment with a definite time limitation, except one so appointed for full-time employment without a break in service of more than 3 days following service under an appointment without time limitation:"

The statute does not define the term "definite time limitation." However, the implementing regulations for this subsection which are found in 5 C.F.R. § 550.704(b) (4) (111) provides:

"(4)(iii) An employee is considered to be serving under an appointment with a definite time limitation for purposes of section 5595(a)(2)(ii) of that title, when (a) he accepts an appointment without time limitation in an agency which is scheduled by law or Executive order to be terminated within 5 years of the date of his appointment, and (b) the scheduled date of termination for the agency has not been extended beyond 5 years of the date of appointment at the time of the employee's separation."

On August 16, 1976, the Deputy Administrator of the ARBA requested an interpretation from the Civil Service Commission of 5 C.F.R. § 550.704(b)(4)(iii). In responding to that request, the Director of the Civil Service Commission in a letter dated October 8, 1976, responded in part as follows:

"Severance pay is viewed as a cushion for employees unexpectedly terminated from their positions because of changing program demands or increases in efficiency resulting in reduced need for the employees' services. When Congress passed PL 89-301 authorizing severance pay, they provided that certain employees, along them employees serving in appointments with a definite time limitation, would not be eligible for severance

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pay because at the time of appointment there was an expectation of separation. Under its delegated authority, and in line with the intent of the law, the Commission expanded this concept to exclude from eligibility for severance pay those employees who accepted appointment in an agency which was scheduled to terminate within Five years from the date of the employee's appointment (5 C.F.R. § 550.794(b)(4)(iii)). In approving this change in the severance pay regulation it was noted at the time that in substance there is no difference between an employee accepting an appointment under such circumstances in an agency with a definite termination date and an employee accepting an appointment with a definite wime 1 mitation -- both employees know when they accept their appointment that they will be separated by a certain date."

We see no reason to disagree with the views of the Civil Service Commission. See 50 Comp. Gen. 726 (1971); and 56 Comp. Gen. 750 (1977). See also B-162646, December 6, 1967.

At the time the employed accepted an appointment with ARBA, April 21, 1975, the activity had a termination date established by statute of less than 5 years, June 30, 1977. The very nature of the ARBA connoted an activity with a limited function and life span. Since the employee was aware at the time of her appointment of the temporary nature of the activity, separation should not be unexpected. The fact that separation may occur sooner than anticipated or that the employee may not have been informed of her ineligibility for severance pay, does not change the requirement of the law and regulation. The length of the break in service of her prior employment in the Department of Defense of 314 days does not permit her to come within the exception provided to those without a break in service of more than 3 days following service under an appointment without time limitation.

Therefore, whether or not the employee's separation from ARBA was voluntary or involuntary is not determinative of the issue in her case. She was not entitled to severance pay because she was appointed after the date of establishment of ARBA, an agency with a statutory termination date, and is therefore subject to the

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5-year limitation of the regulation. To au torize severance pay in such a case would violate the spirit of the law and the regulation that severance pay be provided only for employees who are terminated unexpectedly, and would negate the intent of Congress in excepting employees with appointments of limited duration from the provisions of the law.

Therefore, there is no basis upon which we may allow her claim and the action of the Claims Division disallowing the claim is sustained.

Deputy Comptroller General of the United States